

INDUSTRY CIRCULAR

OFFICE OF THE COMMISSIONER OF INTERNAL
REVENUE AND TOBACCO TAX DIVISION



Industry Circular No. 58-10

May 12, 1958

RECORDKEEPING REQUIREMENTS APPLICABLE TO CERTAIN SALES ACTIVITIES

**Bottlers of distilled spirits; wholesale
liquor dealers; and others concerned:**

Purpose. The purpose of this Industry Circular is to clarify the application of the recordkeeping requirements with respect to the receipt and disposition of distilled spirits under Chapter 51 of the Internal Revenue Code and regulations thereunder as they apply to distilled spirits disposed of under the guise of "salesmen's samples".

Regulations. The regulations in 26 CFR Parts 220, 221, 225, 230, and 235 (for example, 26 CFR 220.758, 220.759, 221.773, and 221.774) provide that the distiller, warehouseman, rectifier, or bottler, as the case may be, is to keep daily records of the receipt and disposition of distilled spirits for each of the premises maintained by him for the receipt, storage, and disposition of taxpaid distilled spirits and to render monthly reports thereof. Similar provisions as to wholesale liquor dealers appear in 26 CFR 194.210, 194.222, and 194.233. Section 194.229 provides that a retailer keep records of all liquors received by him, showing the quantities thereof, from whom received, and the receiving dates. These regulations implement sections 5114, 5124, 5197(a)(2), and 5285(b) of the Internal Revenue Code. Sections 5621 and 5692 of the Internal Revenue Code provide certain specific penalties with respect to refusing or neglecting to keep the records or render the summaries of such records required by the foregoing sections of law. The penal and forfeiture provisions of sections 5686(b) and 7302 of the Code are also applicable to any violations of these provisions.

Background. It has come to the attention of this office that some wholesalers, possibly in an attempt to avoid or evade State tax or price posting requirements, have been reporting as "salesmen's samples" quantities of distilled spirits that have been disposed of to retail dealers as a "bonus" in connection with quantity purchases of distilled spirits. Such "bonus" quantities have been delivered to the retail customer either by the wholesaler through his salesmen or by the sales representative of his supplier, or have been disposed of to the latter with the understanding that the sales representative will in turn pass them on to the retailer. In many instances the "bonus" quantity was not invoiced to the retailer, nor was any record of its receipt kept by the retailer.

Discussion. The records required of a liquor dealer are an integral part of the controls necessary in administering the internal revenue laws relating to distilled spirits. Such records must show all required information (including, in the case of a wholesale liquor dealer, the name and address of the person to whom he gave or sold the distilled spirits). Falsification of these records or failure by a liquor dealer to correctly report distilled spirits, whether or not

disposed of, or received, as "bonuses," or sold or given to a sales representative of the wholesaler's supplier for any purpose, will render the dealer liable to the penalty and forfeiture provisions referred to above. A sales representative of a wholesale liquor dealer's supplier who becomes a party to such falsification of records may, under section 2 of Title 18 of the United States Code, also be punishable.

Where a sales representative procures stocks of distilled spirits that are to be paid for by his principal, either in cash or by credit, for delivery to retailers as a "bonus", or inducement to purchase, such quantities must be reported as received and sent out by his principal in accordance with the requirements of the appropriate regulations referred to above. Of course, if such stocks are sold to retailers, occupational tax as well as recordkeeping liability will be involved.

Any noncompliance with the regulations as described herein renders the wholesaler or the sales representative's principal, as the case may be, liable to the penalty provisions of section 5621 of the Internal Revenue Code for the failure to keep records and may, in addition, jeopardize his basic permit under the Federal Alcohol Administration Act.

Reporting Bona Fide Samples. It has long been a practice in the wholesale trade for salesmen to carry small quantities of their wares as samples in order that the trade might compare their products with competitive brands as to packaging, taste, and quality. In this connection, reference is made to the recognition given the distribution as samples of one pint or less of distilled spirits to retailers in Federal Alcohol Administration Act Regulations 6 (27 CFR 6.29). It is recognized that the reporting in detail of small quantities of distilled spirits actually distributed to prospective purchasers as bona fide samples would be burdensome and would serve little purpose from a control standpoint. Therefore, a wholesaler is considered in substantial compliance with the requirements of the regulations if he reports distilled spirits so distributed as disposed of as "salesmen's samples" showing the name of the salesman who received them, without showing the ultimate disposition of such spirits by the salesman, provided, of course, that the spirits so reported are in fact used in good faith as samples by the salesman.

Similarly, where a sales representative procures small quantities of distilled spirits from his principal's customers or other wholesale or retail dealers for use as bona fide samples in his contacts with the trade, neither the principal nor the sales representative is required to maintain records of the receipt and disposition and to render reports of such distilled spirits so used. Of course, the wholesaler from whom the spirits are procured is not relieved from recording and reporting his disposition of the spirits to the sales representative or his principal, as the case may be.

Inquiries. Inquiries regarding this industry circular should refer to its number and be addressed to the office of your assistant regional commissioner (alcohol and tobacco tax).



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